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APPLICATION NO. 097049,304	FILING DATE 03/27/98	FIRST NAMED INVENTOR FALCO	S	ATTORNEY DOCKET NO. BB 10371
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HM22/0914
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EXAMINER
MCELWAIN, E

ART UNIT
1049

PAPER NUMBER
6

DATE MAILED: 09/14/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
09/049,340

Applicant(s)
Falco

Examiner
Elizabeth McElwain

Group Art Unit
1649



Responsive to communication(s) filed on Mar 27, 1998

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 0 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claims 1-20 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15 drawn to DNA encoding lysine ketoglutarate reductase (LKR), plant cells and plants transformed with said gene and a method of reducing LKR activity in plant seeds, classified in class 800, subclass 278, for example.
- 5 II. Claims 16-20 drawn to a DNA fragment encoding both LKR and dihydropicolinic acid synthase, and plants and seeds transformed with these two genes, classified in class 800, subclass 298, for example.

The inventions are distinct, each from the other because:

The inventions of Groups I-II are drawn to distinct products. The invention of group I
10 is drawn to an LKR gene and plants transformed therewith, while the invention of group II is drawn to DNA encoding both LKR and dihydropicolinic acid synthase, and plants and seeds transformed with both genes. Thus the inventions of groups I and II are chemically, functionally and structurally distinct products and each are capable of being separately made, independently used and the patentability of one would not render the other obvious or
15 unpatentable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Tuesday through Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909. The fax phone number for this Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

September 9, 1999

ELIZABETH F. McELWAIN
PRIMARY EXAMINER
~~GROUP 1800~~
Elizabeth F. McElwain